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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

13 CR 811 (ALC)

5 ANDY MACCOW,

6 Defendant.

7 -----x  
8 New York, N.Y.  
9 November 12, 2014  
2:30 p.m.

10  
11 Before:

12 ANDREW L. CARTER, JR.

13  
14 District Judge

15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the  
Southern District of New York

18 BY: JASON A. MASIMORE

Assistant United States Attorney

19 DOAR, RIECK, KALEY & MACK

Attorneys for Defendant

20 BY: WALTER STAUNTON MACK, JR.

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1 THE DEPUTY CLERK: Criminal cause for a change of plea  
2 hearing in case number 13 CR 811, United States v. Andy Maccow.

3 Counsel, please state your appearance for the  
4 government.

5 MR. MASIMORE: Good afternoon, your Honor.

6 Jason Masimore for the government.

7 THE DEPUTY CLERK: And for the defendant.

8 MR. MACK: Good afternoon, your Honor.

9 Walter Mack for the defendant, Andy Maccow, who is  
10 sitting to my left.

11 THE COURT: Good afternoon.

12 My understanding is that Mr. Maccow would like to  
13 waive indictment and ultimately plead guilty to a superseding  
14 information pursuant to an agreement with the government, is  
15 that correct?

16 MR. MACK: That is correct.

17 THE COURT: Mr. Maccow, I will ask you some questions.  
18 I am going to require that your answers be under oath so I will  
19 ask my wonderful and talented deputy to administer an oath.

20 (Defendant sworn)

21 THE COURT: Mr. Maccow, what is your full name?

22 THE DEFENDANT: Andy Hector Maccow.

23 THE COURT: How old are you?

24 THE DEFENDANT: 30 years old.

25 THE COURT: How far did you go in school?

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1 THE DEFENDANT: 11th grade, sir.

2 THE COURT: Are you currently or have you recently  
3 been under the care of a physician or a psychiatrist?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you recently been hospitalized or  
6 treated for narcotics addiction?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you taken any drugs, medicine or  
9 pills or had any alcoholic beverage in the last 24 hours?

10 THE DEFENDANT: No, sir.

11 THE COURT: Have you seen a copy of the superseding  
12 information?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you discussed it with your attorney?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand the nature of the  
17 charges in the superseding information?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Counsel for Mr. Maccow, is that correct?

20 MR. MACK: That is correct, your Honor.

21 THE COURT: I've observed Mr. Maccow's appearance in  
22 court and his answers to my questions. He appears alert. I  
23 find that he is competent to proceed and we will continue.

24 Counsel for the defense, do you have any doubt as to  
25 Mr. Maccow's competency to proceed?

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1 MR. MACK: None whatsoever.

2 THE COURT: Turning to that superseding information,  
3 the superseding information has three felony counts. Do you  
4 understand, Mr. Maccow?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Count 1 is a conspiracy to burglarize  
7 pharmacies. And Count 1 has charged two overt acts. The first  
8 overt act in furtherance of the conspiracy and to effect the  
9 illegal object of the conspiracy, the government has claimed  
10 that on or about October 15, 2013 that you participated in the  
11 attempted burglary of a pharmacy at 83 East Gun Hill Road in  
12 the Bronx during which you and your co-conspirators intended to  
13 steal controlled substances.

14 In addition, on or about April 23, 2012, Maccow  
15 participated in the burglary of a pharmacy at 495 Beach 20th  
16 Street in Queens, during which tablets containing controlled  
17 substances were stolen, along with more than \$23,000 in United  
18 States currency, in violation of Title 18, United States Code,  
19 Section 2118(d). Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Count 2 charges a narcotics conspiracy.  
22 Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Count 3 charges obstruction of justice.  
25 Do you understand?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: In addition, there are forfeiture  
3 allegations and a substitute assets provision in the  
4 superseding information. Do you understand?

5 (Discussion off the record between defendant and  
6 counsel)

7 THE DEFENDANT: Yes, I do, understand. Yes.

8 THE COURT: Have you reviewed all of that with your  
9 attorney?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Counsel, do you believe that Mr. Maccow  
12 understands the nature of all of the charges contained against  
13 him in the superseding information as well as the forfeiture  
14 allegation and substitute assets provision?

15 MR. MACK: I do so.

16 THE COURT: Do you waive a formal reading of the  
17 superseding information?

18 MR. MACK: I do, your Honor.

19 THE COURT: Mr. Maccow, again, let me ask you, do you  
20 understand the nature of the charges against you in the  
21 superseding information?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You have a constitutional right to be  
24 charged by an indictment of a grand jury, but you can waive  
25 that right and consent to being charged by an information of a

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1 United States Attorney. Instead of an indictment, these felony  
2 charges against you have been brought by the U.S. Attorney by  
3 the filing of an information. Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Unless you waive indictment, you may not  
6 be charged with a felony unless a grand jury finds by return of  
7 an indictment that there is probable cause to believe that a  
8 crime has been committed and that you committed it. If you do  
9 not waive indictment, the government may present the case to a  
10 grand jury and ask it to indict you. Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: A grand jury is composed of at least 16  
13 and not more than 23 persons, and at least 12 grand jurors must  
14 find that there is probable cause to believe you committed the  
15 crime with which you are charged before you may be indicted.  
16 The grand jury might or might not indict you. Do you  
17 understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: If you waive indictment by the grand jury,  
20 the case will proceed against you on the U.S. Attorney's  
21 information just as though you had been indicted. Do you  
22 understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you discussed waiving your right to  
25 indictment by the grand jury with your attorney?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand your right to be  
3 indicted by a grand jury?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have any threats or promises been made to  
6 induce you to waive indictment?

7 THE DEFENDANT: No, sir.

8 THE COURT: I want to make sure you understand that  
9 you have the right to be represented by an attorney at every  
10 stage of this criminal litigation. Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If you cannot afford to hire your own  
13 attorney, the Court will give you an attorney for free. Do you  
14 understand?

15 THE DEFENDANT: Yes, sir?

16 THE COURT: Counsel, are you appointed or retained on  
17 this matter?

18 MR. MACK: I am appointed, your Honor.

19 THE COURT: Mr. Maccow, do you wish to waive your  
20 right to indictment by a grand jury?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Counsel, is there any reason why your  
23 client should not waive indictment?

24 MR. MACK: None that I know of, your Honor.

25 THE COURT: I have a waiver of indictment form that

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1 appears to be signed by Mr. Maccow.

2 Let me just confirm that that is your signature?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Before signing it, did you read that and  
5 discuss that with your attorney?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And when you signed it, did you sign it  
8 because you wished to waive your right to indictment?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. I will enter an order finding  
11 that the waiver is knowingly and voluntarily made, and I accept  
12 the waiver, proceed to arraignment on the superseding  
13 information.

14 You have indicated, Mr. Maccow, that you do in fact  
15 understand the nature of the charges contained in the  
16 superseding information, correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I understand that you ultimately wish to  
19 plead guilty to the superseding information, but before I can  
20 accept any plea of guilty, I have to make sure that you have  
21 understood the rights that you will be waiving by pleading  
22 guilty and make sure there is a factual basis for the plea. So  
23 for the time being, the Court will enter a plea of not guilty  
24 on your behalf to all three charges in the superseded  
25 information. Do you understand?



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1 (Discussion off the record between defendant and  
2 counsel)

3 THE DEFENDANT: I understand.

4 THE COURT: So for the time being, the Court will  
5 enter on your behalf a plea of not guilty to the three charges  
6 contained in the superseding information. Do you understand  
7 that?

8 (Discussion off the record between defendant and  
9 counsel)

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, Mr. Maccow, you have a constitutional  
12 right to continue to plead not guilty. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If you persist in your plea of not guilty,  
15 you have a right to a speedy and public trial by jury. Do you  
16 understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: At every stage of this criminal litigation  
19 including trial, you have the right to be represented by an  
20 attorney, and if you could not afford an attorney, the Court  
21 would give you an attorney for free. Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: At trial you would be presumed innocent  
24 and you would not have to prove that you were innocent. Do you  
25 understand?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: The burden of proof would be on the  
3 government at all times and the government would have to prove  
4 each and every element of the crimes charged beyond a  
5 reasonable doubt. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Let's turn to the elements that the  
8 government would have to prove. For Count 1, the government  
9 would have to prove beyond a reasonable doubt that, first, two  
10 or more persons agreed to burglarize or attempt to burglar  
11 pharmacies involving controlled substances. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Second, that you joined the agreement or  
14 conspiracy knowing of its objective to burglarize and attempt  
15 to burglarize pharmacies involving controlled substances. Do  
16 you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Third, that at some time during the  
19 existence of the agreement or conspiracy, at least one of its  
20 members performed an overt act in order to further the  
21 objectives of the agreement. Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Count 2 has the following elements.

24 First, without authority, you entered or attempted to  
25 enter or remain in the business premises or property of a

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1 person registered with the Drug Enforcement Agency under  
2 Section 302 of the Controlled Substances Act, 21, U.S.C.,  
3 Section 822. Do you understand?

4 (Discussion off the record between defendant and  
5 counsel)

6 THE DEFENDANT: Yeah, I do understand. Yes, sir.

7 THE COURT: Second, that you intended to steal  
8 materials or compounds containing any quantity of a controlled  
9 substance. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Third, that the replacement costs of the  
12 controlled substance to the person registered with the Drug  
13 Enforcement Agency was not less than \$500 or the person who  
14 engaged in such entry or attempted such entry or who remained  
15 in such premises or property traveled in interstate commerce or  
16 used any facility in interstate commerce to facilitate such  
17 entry or attempt or to facilitate or to remain in such premises  
18 or property. Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: In addition, for all three counts, if you  
21 plead guilty, you would be waiving your right to challenge the  
22 venue of the prosecution. What that means is, ordinarily, the  
23 government is required to bring the prosecution in the judicial  
24 district where the crime took place. If you plead guilty, you  
25 will be giving up your right to challenge the venue of this

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1 prosecution. Do you understand?

2 MR. MACK: Just one moment.

3 (Discussion off the record between defendant and  
4 counsel)

5 THE DEFENDANT: Yes, sir, I do understand.

6 THE COURT: Counsel for the government, have I left  
7 out any elements of any of the offenses?

8 MR. MASIMORE: Your Honor, did I miss on Count 3, the  
9 obstruction charge?

10 THE COURT: You are very correct. Thank you.

11 Let's go to Count 3. Those are the elements for  
12 Counts 1 and 2.

13 MR. MASIMORE: Your Honor, did the Court give the  
14 instructions on the narcotics conspiracy or was it substantive  
15 burglary which would be the objective of the offense? I wasn't  
16 sure if I was following it correctly, but I think that I heard  
17 the Court give the objectives of the Count 1 conspiracy and  
18 then explain the elements of the substantive offense for  
19 burglary. I don't recall hearing the elements for the Count 2  
20 drug conspiracy or Count 3.

21 THE COURT: Thank you.

22 MR. MASIMORE: I do have a letter dated November 12th,  
23 I can hand up the copy, that has the elements.

24 THE COURT: I do have it.

25 Let's go back. Let's start again. Let's go over the

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1 elements that the government would have to prove.

2 Again, the charges contained against you for Counts 1,  
3 2 and 3 of the superseding indictment are:

4 For Count 1, the government would have to prove that:

5 First, that two or more persons agreed to burglarize  
6 or attempted to burglarize pharmacies involving controlled  
7 substances. Do you understand?

8 THE DEFENDANT: Yes, I do understand.

9 THE COURT: Second, that if you joined the agreement  
10 or conspiracy knowing of its objective to burglarize or attempt  
11 to burglarize pharmacies involving controlled substances. Do  
12 you understand?

13 THE DEFENDANT: Yes, sir, I do understand.

14 THE COURT: Third, that at sometime during the  
15 existence of the agreement or conspiracy, at least one of its  
16 members performed an overt act in order to further the  
17 objectives of the agreement. Do you understand?

18 THE DEFENDANT: Yes, sir, I do understand.

19 THE COURT: Count 2, the narcotics conspiracy has the  
20 following two elements:

21 First, that you agreed with others to possess with  
22 intent to distribute controlled substances including oxycodone.  
23 Do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Second, that you did so knowingly and

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1 intentionally. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Count 3, obstruction of justice has the  
4 following elements:

5 First, on or about the date charged, May 19, 2012,  
6 that you knowingly used physical force or the threat of  
7 physical force against a person, Jonathan Quello. Do you  
8 understand?

9 THE DEFENDANT: Yes, sir, I do understand.

10 THE COURT: Second, that you acted knowingly and with  
11 the intent to influence the testimony of that person, Quello,  
12 in an official federal proceeding, United States v. Esfrain  
13 Silva, 12 CR 298, or cause or induce the person Quello to  
14 withhold testimony from an official proceeding, United States  
15 v. Silva, or to hinder, delay or prevent the communication to a  
16 law enforcement officer of information relating to the  
17 commission of a federal offense. That is U.S. v. Silva and the  
18 federal investigation that lead to the indictment of you and  
19 the others in this case. Do you understand?

20 THE DEFENDANT: Yes, I do understand the elements.

21 THE COURT: For all three of those charges, if you  
22 plead guilty, you will be waiving your right to challenge the  
23 venue of the prosecution. Do you understand?

24 THE DEFENDANT: Yes, sir, I do understand.

25 THE COURT: Again, venue means that the government

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1 must bring the case in the judicial district where the crime  
2 took place. If you plead guilty, you would be waiving your  
3 right to challenge the venue of this prosecution. Do you  
4 understand?

5 THE DEFENDANT: Yes, sir, I do understand.

6 THE COURT: Counsel for the government, have I left  
7 out any elements of the offenses?

8 MR. MASIMORE: No, your Honor.

9 THE COURT: Counsel for the defense, have I left out  
10 any elements of the offense?

11 MR. MACK: Not to my knowledge.

12 THE COURT: So, Mr. Maccow, the government would have  
13 to prove each and every one those elements to a jury beyond a  
14 reasonable doubt. Do you understand?

15 THE DEFENDANT: Yes, sir, I do understand.

16 THE COURT: In order to attempt to prove your guilt  
17 beyond a reasonable doubt, the government would call witnesses.  
18 Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Your lawyer could question those witnesses  
21 and your lawyer could object to evidence that the government  
22 sought to introduce against you. Do you understand?

23 THE DEFENDANT: Yes, sir, I do understand.

24 THE COURT: You could call your own witnesses at trial  
25 and your lawyer would have the subpoena power of the United

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1 States to make those witnesses come to court for you. Do you  
2 understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You could also testify in your own behalf  
5 at trial. Do you understand?

6 THE DEFENDANT: Yes, I do understand.

7 THE COURT: At the same time, you could not be forced  
8 to testify because you have a right against self-incrimination.  
9 Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: That right against self-incrimination  
12 means that you cannot be required to say that you are guilty  
13 out of your own mouth. Do you understand?

14 THE DEFENDANT: Yes, sir, I do understand.

15 THE COURT: So even if you are guilty, you are not  
16 required to plead guilty. You could remain silent and force  
17 the government to attempt to prove your guilt beyond a  
18 reasonable doubt. If the government could not prove each and  
19 every element of the crime charged against you beyond a  
20 reasonable doubt, the jury would have to find you not guilty.  
21 Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If you plead guilty, I will have to ask  
24 you what you did that makes you guilty. When you answer those  
25 questions, you will be saying that you are guilty out of your



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1 own mouth, thereby giving up your right against  
2 self-incrimination. Do you understand?

3 THE DEFENDANT: Yes, sir, I do understand.

4 THE COURT: Let's talk about the sentencing guidelines  
5 and the sentencing process.

6 The sentencing guidelines are advisory. What that  
7 means is that, while I am required to determine the guideline  
8 range that applies to your case, once I make that  
9 determination, I am not required to sentence you within that  
10 guideline range. Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If you plead guilty, you will meet with  
13 the probation department and they will prepare a presentence  
14 report. That report will have information about you and the  
15 crimes that you are alleged to have committed. Do you  
16 understand?

17 THE DEFENDANT: Yes, sir, I do understand.

18 THE COURT: That report will also have the probation  
19 department's guideline calculation. If the guideline  
20 calculation contained in the report is different than the  
21 guideline calculation that I ultimately determine and if the  
22 guideline calculation that I ultimately determine is different  
23 from what you are hoping for, that will not be a ground to take  
24 your plea back. Do you understand?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: If the sentence that I impose is within or  
2 outside of the guideline range, is different from what you were  
3 hoping for, that will not be a ground to take your plea back.  
4 Do you understand?

5 THE DEFENDANT: Yes, sir, I do understand.

6 THE COURT: So as you sit here today, there is no  
7 promise as to what your guideline range will be nor is there a  
8 promise as to what your sentence will be. Do you understand?

9 THE DEFENDANT: Yes, sir, I do understand.

10 THE COURT: Let's talk about your agreement with the  
11 government.

12 Is this your signature on the last page of that  
13 document?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Before signing it, did you read it and  
16 discuss it with your attorney?

17 THE DEFENDANT: Yes, sir, I did.

18 THE COURT: Does that agreement contain the entirety  
19 of your agreement with the government?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Counsel, for the government is that  
22 correct?

23 MR. MASIMORE: Yes, your Honor.

24 THE COURT: Counsel for the defense, is that correct?

25 MR. MACK: That is correct.

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1 THE COURT: Let's talk about the statutory penalties  
2 that apply.

3 Count 1 has a maximum term of imprisonment of 10  
4 years. Do you understand?

5 THE DEFENDANT: Yes, I do, Judge.

6 THE COURT: There is a maximum term of supervised  
7 release of three years. Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Supervised release is like a term of  
10 probation you would serve after a term of custody. You would  
11 be subject to drug testing, visits to a probation officer's  
12 office and other limitations on your freedom. Do you  
13 understand?

14 THE DEFENDANT: Yes, sir, I do.

15 THE COURT: If you were to violate a condition of  
16 supervised release, you could be sentenced to an additional  
17 term of custody and/or an additional term of supervised release  
18 without credit for time previously served in custody or on  
19 supervised release. Do you understand?

20 THE DEFENDANT: Yes, sir, I do.

21 THE COURT: You will be subject to the possibility of  
22 a maximum fine of the greatest of \$250,000, twice the gross  
23 pecuniary gain derived from the offense or twice the gross  
24 pecuniary loss to persons other than you resulting from the  
25 offense. Do you understand?

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1 THE DEFENDANT: Yes, I understand, sir.

2 THE COURT: In addition, for Count 1, you will be  
3 subject to a \$100 special assessment. It is like a fine except  
4 it is mandatory. You must pay that to the United States. Do  
5 you understand?

6 THE DEFENDANT: Yes, I understand that.

7 THE COURT: Count 2 has a maximum term of imprisonment  
8 of 20 years. Do you understand?

9 THE DEFENDANT: Yes.

10 THE COURT: And there is a maximum term of supervised  
11 release of life. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: The maximum fine for Count 2 is \$1  
14 million. Do you understand?

15 THE DEFENDANT: Yes, I understand.

16 THE COURT: For Count 2 there is also a \$100 mandatory  
17 special assessment. Do you understand?

18 THE DEFENDANT: Yes, sir, I understand.

19 THE COURT: Count 3 has a maximum term of imprisonment  
20 of 30 years. Do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And a maximum term of supervised release  
23 of five years. Do you understand?

24 THE DEFENDANT: Yes, I do, sir.

25 THE COURT: The maximum fine on Count 3 is the

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1 greatest of \$250,000 or twice the gross pecuniary gain derived  
2 from the offense or twice the gross pecuniary loss to persons  
3 other than you resulting from the offense. Do you understand?

4 THE DEFENDANT: Yes, I do understand.

5 THE COURT: Count 3 also has a \$100 mandatory special  
6 assessment. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: So the total maximum term of imprisonment  
9 on Counts 1 through 3 is 60 years. Do you understand?

10 THE DEFENDANT: Yes, I understand, sir.

11 THE COURT: In addition, under your agreement with the  
12 government, you have agreed to make restitution in an amount  
13 determined by the Court in accordance with 18, U.S.C., Sections  
14 3663 and 3663(a). Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Also, pursuant to your agreement with the  
17 government, you are admitting the forfeiture allegations with  
18 respect to Counts 1 and 2 of the superseding information. Do  
19 you understand?

20 THE DEFENDANT: Yes, sir, I understand.

21 THE COURT: If you are not a United States citizen,  
22 you need to be aware that your plea and conviction for Counts 1  
23 through 3 subject you to the possibility that you would be  
24 deported, in fact, it subjects you to the possibility that your  
25 deportation or removal from the United States would be

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1 mandatory. Do you understand?

2 THE DEFENDANT: Yes, I understand.

3 THE COURT: Have you discussed that with your  
4 attorney?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You have a statutory right to appeal. If  
7 you cannot afford to hire an attorney to help you prosecute the  
8 appeal, the Court would give you an attorney for free. Do you  
9 understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: While you have a statutory right to  
12 appeal, under your agreement with the government, you have  
13 agreed not to file an appeal or bring a collateral change nor  
14 seek a sentence modification of any sentence within or below a  
15 guideline range of 92 to 115 months' imprisonment. Do you  
16 understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Again, I reiterate, there are no promises  
19 as to what your guideline range will be nor is there a  
20 promise as to what your sentence will be. There is an  
21 estimated guideline range contained in your agreement with the  
22 government. Have you seen that and discussed that with your  
23 attorney?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Counsel for the defendant, do you have

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1 anything to add with respect to that estimate at this time?

2 MR. MACK: Nothing other than what is in the  
3 agreement, your Honor, nothing to add to that description.

4 THE COURT: So, Mr. Maccow, make sure that you  
5 understand that is an estimate. It is not binding on the  
6 probation department and it is not binding on me. Do you  
7 understand?

8 THE DEFENDANT: Yes, sir. I do understand, sir.

9 THE COURT: Mr. Maccow, are you satisfied with your  
10 legal representation up to this point?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you have any questions you would like  
13 to ask your attorney in private before we continue?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you have any questions for me before we  
16 continue?

17 THE DEFENDANT: No, sir.

18 THE COURT: Counsel, are you aware of any reason why  
19 Mr. Maccow should not plead guilty?

20 MR. MACK: I am unaware of any such reason.

21 THE COURT: Are you aware of any defense to the  
22 charges?

23 MR. MACK: No.

24 THE COURT: Mr. Maccow, are you willing to give up  
25 your right to a trial and the other rights that we have

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1 discussed?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Other than what is contained in Court  
4 Exhibit 1, your agreement with the government, has anyone made  
5 any promises to induce you to give up those rights?

6 THE DEFENDANT: No, sir.

7 THE COURT: Has anybody made any threats or forced you  
8 to give up those rights?

9 THE DEFENDANT: No, sir.

10 THE COURT: How do you plead to Counts 1 through 3 of  
11 the superseding information, guilty or not guilty?

12 THE DEFENDANT: Guilty, sir.

13 THE COURT: What did you do that makes you guilty of  
14 the crimes charged?

15 (Discussion off the record between defendant and  
16 counsel)

17 THE DEFENDANT: From at least 2008 and including  
18 around October 30, 2013 in the Bronx, New York and elsewhere, I  
19 agreed with others to attempt to get into, burglarize  
20 drugstores, pharmacies for the purpose of stealing drugs and  
21 controlled substance.

22 As part of that agreement, I attempted to burglarize a  
23 pharmacy at 83 East Gun Hill Road in the Bronx around October  
24 15, 2013.

25 And around April 23, 2012, I did participate in a



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1 burglary at 495 Beach 20th Street in Queens in which a  
2 controlled substance was stolen.

3 (Discussion off the record between defendant and  
4 counsel)

5 THE DEFENDANT: Again, from at least 2008 until around  
6 October 30, 2013, I did agree with others that the Schedule II  
7 drugs including oxycodone and oxymorphone, that I, with others,  
8 took from pharmacy burglarized would be distributed and sold by  
9 others for profit.

10 Around May 19, 2012, in the Southern District of New  
11 York, I lost my temper and struck a person who I believed was  
12 providing information to the police or other law enforcement  
13 people that were harming my friends in a criminal  
14 investigation --

15 (Discussion off the record between defendant and  
16 counsel)

17 -- to stop them from providing information to law  
18 enforcement.

19 THE COURT: So for Count 3, you indicated that you  
20 lost your temper and you hit someone. Did you hit that person  
21 with the intention of keeping them from providing information?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Did that keep them from providing  
24 information related to potential targets against you?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: You have indicated as to Count 1 that you  
2 and others that had this agreement to burglarize pharmacies  
3 used cell phones. Did you use those cell phones to aid in the  
4 attempted entry or remaining in the pharmacies?

5 THE DEFENDANT: Both.

6 THE COURT: Let me hear from the government any  
7 proffer regarding the pharmacies.

8 MR. MASIMORE: I would proffer that the pharmacies,  
9 your Honor, in this case were all registered with the DEA as  
10 required. They were all pharmacies that as part of their  
11 operations dispensed controlled substances pursuant to  
12 prescription.

13 If we were put to our burden of proof at trial, your  
14 Honor, I would also add that some of the pharmacies were within  
15 the Southern District of New York.

16 And part of our evidence would be a statement provided  
17 by Andy Maccow, the defendant, after he was read his Miranda,  
18 waived his Miranda rights, confessing to these crimes.

19 THE COURT: Any other allocution required or requested  
20 by the government?

21 MR. MASIMORE: I believe it is sufficient, your Honor.

22 THE COURT: Anything else from the defense?

23 MR. MACK: No, your Honor.

24 THE COURT: I find that Mr. Maccow is competent to  
25 plead. I find that he understands the rights he is waiving by

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1 pleading guilty. I further find that there is a factual basis  
2 for the plea. I will accept his plea of guilty.

3 Sentencing is set for February 13, 2015 at 2 p.m.

4 Does that date and time work for everyone?

5 MR. MACK: Pardon me, your Honor.

6 Fine, your Honor.

7 THE COURT: In addition, Mr. Maccow, pursuant to your  
8 agreement with the government, you have agreed to a forfeiture  
9 order. You agreed to forfeit certain funds.

10 I have before me a consent preliminary order of  
11 forfeiture.

12 Is that your signature on the last page?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Before signing it, did you discuss it and  
15 review it with it your attorney?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Did you read it before you signed it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did you sign it because it was your  
20 intention to consent to his preliminary order of forfeiture?

21 THE DEFENDANT: Yes, sir, I did.

22 THE COURT: I will accept that.

23 Anything else from the government today?

24 MR. MASIMORE: No, your Honor.

25 Thank you.

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1 THE COURT: Anything else from the defendant?

2 MR. MACK: No, your Honor.

3 THE COURT: Thank you very much.

4 Have a good day.

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